

PRINCE GEORGE'S COUNTY COUNCIL

COMMITTEE REPORT

2023 Legislative Session

Reference No.: CB-031-2023

Draft No.: 2

Committee: PLANNING, HOUSING AND ECONOMIC DEVELOPMENT

Date: 4/6/2023

Action: FAV (A)

REPORT:

Committee Vote: Favorable as amended, 5-0 (In favor: Council Members Ivey, Blegay, Dernoga, Olson, and Oriadha)

The Planning, Housing and Economic Development (PHED) Committee convened on April 6, 2023, to consider CB-31-2023. The PHED Committee Director summarized the purpose of the legislation and informed the Committee of written comments received on referral. This bill amends the definitions of Convenience Store, Gas Station, and Tobacco Shop uses in the Zoning Ordinance to clarify the percentage of certain uses that may be dedicated to the display and sales of tobacco products and provides for a transition period to ensure compliance.

The Planning Board voted to take no position on the bill as explained in a March 23, 2023, letter to the Council Chairman with the following analysis:

Policy Analysis:

The bill amends the definition for a convenience store and a gas station to require no more than thirty-two (32) square feet or five (5) percent of the gross floor area, whichever is less, to be dedicated to the sale of tobacco or tobacco accessories.

In addition, the bill amends the definition for tobacco shop, electronic cigarette shop, or retail tobacco business to designate any convenience store or gas station that provides more than thirty-two (32) square feet or five (5%) of the gross floor area to tobacco products as a tobacco shop, electronic cigarette shop or retail tobacco business.

There are currently one hundred eleven (111) convenience stores, two hundred fifty-five (255) gas stations, and fifty-seven (57) tobacco or electronic cigarette shops in Prince George's County. Limiting the square foot and percentage of tobacco products and accessories sold at convenience stores and gas stations is a policy decision of the District Council.

Impacted Property:

This legislation will affect all convenience store and gas station properties in Prince George's County that sell tobacco products and accessories.

The Chief Zoning Hearing Examiner (ZHE) submitted a March 30, 2023, memorandum to the PHED Committee Director with the following suggested amendment:

On page 3 of the bill add “whichever is less”, on line 2 after “retail sales area” to avoid differing interpretations as to when a Gas Station is also to be considered a tobacco shop, electronic cigarette shop, or retail tobacco business.

The Council’s Zoning and Legislative Counsel summarized revisions in a Proposed Draft-2 (DR-2) prepared at the bill sponsor’s request as follows:

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AN ORDINANCE concerning

Convenience Stores—Gas Stations—Tobacco Shops—Tobacco Product Display and Sales Area
For the purpose of modifying the definitions of Convenience Store, Gas Station, and Tobacco Shop uses in the Zoning Ordinance to clarify the percentage of certain uses that may be dedicated to the display and sales of tobacco and **CANNABIS-RELATED** products; and providing for a transition period to ensure compliance.

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Tobacco shop, electronic cigarette shop, or retail tobacco business

A retail store where the primary use is the retail sale of tobacco products, tobacco smoking accessories, any device **OR PARAPHERNALIA** that can be used to deliver nicotine or other substances **, INCLUDING CANNABIS,** to the person inhaling from the device, or any cartridge, component, or accessory of the device, and which may include on site consumption in accordance with Section 19-131 of the County Code and the incidental sale of food or beverage provided the gross floor area of the food or beverage area does not exceed 49 percent of the gross floor area.

Any “convenience store” or “gas station” which provides more than thirty-two (32) square feet or five percent (5%) of the gross floor area of the use for tobacco products **OR CANNABIS-USE PRODUCTS** shall also be considered a tobacco shop, electronic cigarette shop, or retail tobacco business.

The Zoning and Legislative Counsel also concurred with the ZHE comment and suggested inserting the additional language after “five percent (5%)” to read: “provided that the area of the tobacco products is not more than thirty-two (32) square feet or five percent (5%), **WHICHEVER IS LESS,** of the gross floor area of the overall retail sales area;”

The Office of Law finds the bill to be in proper legislative form with no legal impediments to its adoption. The County Executive’s Office takes no position on the legislation.

Ms. Patrice Murray testified in support of the bill.

Council Vice Chair Blegay, the bill sponsor, applauded her colleagues in their efforts to address residents' concerns with tobacco shops and the provisions of the legislation which will assist in decreasing the number of these uses in the County. Council Member Oriadha, the bill co-sponsor, commented on the importance of CB-31-2023 in addressing a loophole associated with the use being called a convenience store. Council Member Olson commented on the bill's applicability, if any, to cigar stores and cigar lounges and suggested that the Council consider revisiting these uses as well. Council Member Ivey, the bill co-sponsor, commented on the provisions of CB-31-2023 also being helpful in addressing concerns related to the State legislation allowing full recreation use of cannabis effective July 1, 2023.

Following discussion, the Committee voted favorable on CB-31-2023 Proposed DR-2 including the additional revision recommended by the ZHE.